

MT has two definitions of navigable waters

Class I Waters (23-2-301 MCA)	DNRC Navigable Streams
Class I Waters (23-2-301 MCA)	Navigable streams are owned by the state of Montana:
➤ Does not include lakes	Ø Does not include lakes
➤ Includes the mainstem of the following surface waters listed below	Ø Includes the following surface waters listed below
Kootenai River Drainage:	
➤ Kootenai River - from Libby Dam to the Idaho border	KOOTENAI RIVER: Based on historical documentation, the Kootenai River is commercially navigable from the Canadian line to the Idaho state line. Therefore, the state claims ownership of the Kootenai River between these two points.
➤ Lake Creek - from the Chase cut-off road to its confluence with the Kootenai River	
➤ Yaak River - from Yaak Falls to its confluence with the Kootenai River	YAAK RIVER: Based on historical documentation, the Yaak River is commercially navigable from the mouth of Fourth of July Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Yaak River.
	TOBACCO RIVER: Based on historical documentation, the Tobacco River is commercially navigable from the mouth of Graves Creek to its confluence with the Kootenai River. Therefore, the state claims ownership of the Tobacco River between these two points.
	FORTINE CREEK (Tributary to Tobacco River): Based on historical documentation, Fortine Creek is commercially navigable from Swamp Creek to its confluence with the Tobacco River. Therefore, the state claims ownership of Fortine Creek between these two points.
	GRAVES CREEK (Tributary to Tobacco River): Based on historical information and Departmental interpretation, Graves Creek is commercially navigable from where Graves Creek intersects the eastern township line of Township 35 North, Range 26 West, to its confluence with the Tobacco River. Therefore, the state claims ownership of Graves Creek between these two points.
Flathead River Drainage:	
➤ South Fork of the Flathead - from Youngs Creek to Hungry Horse Reservoir	FLATHEAD RIVER - SOUTH FORK: Based on historical documentation, the south fork of the Flathead River is commercially navigable from the face of Hungry Horse Dam to the main stem of the Flathead River. Therefore, the state claims ownership of the south fork of the Flathead River between these two points.
➤ Middle Fork of the Flathead - from Schaffer Creek to its confluence with the mainstem of the Flathead River	FLATHEAD RIVER - MIDDLE FORK: Based on historical documentation, the middle fork of the Flathead River is commercially navigable from three (3) miles above Nyack, Montana to its confluence with the North fork of the Flathead River. Therefore, the state claims ownership of the middle fork of the Flathead River between these two points.
➤ North Fork of the Flathead - from the Canadian border to its confluence with the mainstem of the Flathead River	FLATHEAD RIVER - NORTH FORK: Based on historical documentation, the north fork of the Flathead River is commercially navigable from Logging Creek to its confluence with the main stem of the Flathead River. Therefore, the state claims ownership of the north fork of the Flathead River between these two points.
➤ Flathead River (mainstem) - to its confluence with the Clark Fork River	FLATHEAD RIVER - MAIN STEM: Based on historical documentation, the main stem of the Flathead River is commercially navigable from the confluence of its north and middle forks to its confluence with the Clark Fork River. However, given Neman court case, the state does not claim any river ownership within the boundaries of the Flathead Indian Reservation at this time. Therefore, the state claims ownership of the main stem of the Flathead River excepting any portion within the Flathead Indian Reservation. The state also claims ownership of the portion of Flathead Lake located outside of the Flathead Indian Reservation.
	WHITEFISH RIVER: Based on historical documentation, the Whitefish River is commercially navigable from, and including, Whitefish Lake to its confluence with the Stillwater River. Therefore, the state claims ownership of the Whitefish River between these two points.
	STILLWATER RIVER: Based on historical documentation, the Stillwater River is commercially navigable from upper Stillwater Lake to its confluence with the Flathead River. Therefore, the state claims ownership of the Stillwater River between these two points.
Clark Fork of the Columbia River Drainage:	
➤ Clark Fork River - from Warm Spring Creek to the Idaho border	CLARK FORK RIVER: Based on historical documentation, the Clark Fork River is commercially navigable from Deer Lodge, Montana to the Idaho state line. Therefore, the state claims ownership of the Clark Fork River between these two points.
➤ North Fork of the Blackfoot - from Highway 200 east of Ovando to its confluence with the mainstem of the Blackfoot River	

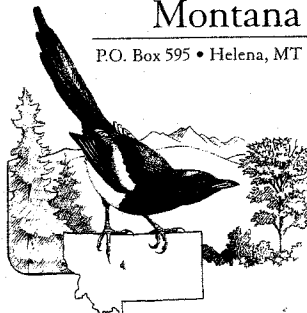
➤ Blackfoot River – from the Cedar Meadow Fishing Access Site west of Helmsville to its confluence with the Clark Fork River	BLACKFOOT RIVER: Based on historical documentation, the Blackfoot River is commercially navigable from Lincoln, Montana to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Blackfoot River between these two points.
➤ Bitterroot River – from the confluence of the East and West forks to its confluence with the Clark Fork River	BITTERROOT RIVER: Based on historical documentation, the Bitterroot River is commercially navigable from the mouth of Jennings Camp Creek on the east fork to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bitterroot River between these two points.
➤ Rock Creek – from the confluence of the West Fork to its confluence with the Clark Fork River	
	BULL RIVER: Based on historical documentation, the Bull River is commercially navigable from a point south of Bull Lake (approximately in Section 16, T28N, R33W) to its confluence with the Clark Fork River. Therefore, the state claims ownership of the Bull River between these two points.
	CLEARWATER RIVER: Based on historical documentation, the Clearwater River is commercially navigable from, and including, Seeley Lake, to its confluence with the Blackfoot River. Therefore, the state claims ownership to Seeley Lake and the Clearwater River between these two points.
	LOLO CREEK: Based on historical documentation, Lolo Creek is commercially navigable from the mouth of Tevis Creek to Lolo Creek's confluence with the Bitterroot River. Therefore, the state claims ownership of Lolo Creek between these two points.
	NINE MILE CREEK (Tributary to the Clark Fork River): Based on historical documentation, Nine Mile Creek is commercially navigable from the southeast corner of Township 17 North, Range 24 West, to its confluence with the Clark Fork River. Therefore, the state claims ownership of Nine Mile Creek between these two points.
	SWAN RIVER: Based on historical documentation, the Swan River is commercially navigable from and including Swan Lake to its confluence with Flathead Lake. Therefore, the state claims ownership of the Swan River between these two points.
Missouri River Drainage:	
➤ Missouri River – from Three Forks to the North Dakota border	MISSOURI RIVER: Based on historical documentation, the Missouri River is commercially navigable from its headwaters at Three Forks, Montana to the North Dakota state line. Therefore, the state claims ownership of the Missouri River between these two points.
➤ Beaverhead River – from Clark Canyon Dam to its confluence with the Jefferson River	
➤ Big Hole River – from Fishtrap Fishing Access Site downstream from Wisdom to its confluence with the Jefferson River	BIG HOLE RIVER: Based on historical documentation, the Big Hole River is commercially navigable from Steel Creek to Divide, Montana. Therefore, the state claims ownership of the Big Hole River between these two points.
➤ Gallatin River – from Taylors Fork to its confluence with the Missouri River	GALLATIN RIVER: Based on historical documentation, the Gallatin River is commercially navigable from Taylor's Fork to Central Park, Montana. Therefore, the state claims ownership of the Gallatin River between these two points.
➤ Jefferson River – to its confluence with the Missouri River	JEFFERSON RIVER: Based on historical documentation, the Jefferson River is commercially navigable from its confluence of the Beaverhead and Ruby Rivers to the Jefferson's confluence with the Missouri River. Therefore, the state claims ownership of the Jefferson River between these two points.
➤ Madison River – from Quake Lake to its confluence with the Missouri River	MADISON RIVER: Based on historical documentation, the Madison River is commercially navigable from the confluence of its west fork to Varney, Montana. Therefore, the state claims ownership of the Madison River between these two points.
➤ Dearborn River – from the Highway 434 bridge to its confluence with the Missouri River	DEARBORN RIVER: Based on historical documentation and court adjudication, the Dearborn River is commercially navigable from Highway 434 to its confluence with the Missouri River. Therefore, the state claims ownership of the Dearborn River between these two points.
➤ Sun River – from Gibson Dam to its confluence with the Missouri River	SUN RIVER: Based on historical documentation, the Sun River is commercially navigable from the confluence of the north and south forks of the Sun River to its confluence with the Missouri River. Therefore, the state claims ownership of the Sun River between these two points.
➤ Smith River – from Camp Baker Fishing Access Site near Fort Logan to its confluence with the Missouri River	SMITH RIVER: Based on historical documentation, the Smith River is commercially navigable from the mouth of Sheep Creek to its confluence with the Missouri River. Therefore, the state claims ownership of the Smith River between these two points.
➤ Marias River – from Tiber Dam to its confluence with the Missouri River	MARIAS RIVER: Based on historical documentation, the Marias River is commercially navigable from its confluence with the Missouri River to a point five miles upstream. Therefore, the state claims ownership of the Marias River between these two points.
➤ Judith River – from the confluence of Big Spring Creek to its confluence with the Missouri River	

	DUPUYER CREEK: See "South Fork Dupuyer Creek".
	SHEEP CREEK (Tributary to Smith River): Based on historical documentation, Sheep Creek is commercially navigable from the mouth of Deadman Creek to its confluence with the Smith River. Therefore, the state claims ownership of Sheep Creek between these two points.
	SOUTH FORK DUPUYER CREEK (Tributary to Dupuyer Creek and Marias River): Based on historical documentation, the south fork of Dupuyer Creek is commercially navigable from the basins above the canyon to the mouth of the canyon, a distance of approximately five miles. Therefore, the state claims ownership of the south fork of Dupuyer Creek between these two points.
	TETON RIVER: Based on historical documentation, the Teton River is commercially navigable from the confluence of its north fork to its confluence with the Marias River. Therefore, the state claims ownership of the Teton River between these two points.
	MILK RIVER: Based on historical documentation, the Milk River is commercially navigable from Glasgow to its confluence with the Missouri River. Therefore, the state claims ownership of the Milk River between these two points.
Yellowstone River Drainage:	
➤ Yellowstone River – from Yellowstone National Park to the North Dakota border	YELLOWSTONE RIVER: Based on historical documentation, the Yellowstone River is commercially navigable from the mouth of Emigrant Creek to the North Dakota state line. Therefore, the state claims ownership of the Yellowstone River between these two points.
➤ Bighorn River – from Yellowtail Dam to its confluence with the Yellowstone River	BIG HORN RIVER: Based on historical documentation, the Big Horn River is commercially navigable from the Wyoming state line to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Big Horn River between these two points.
➤ Tongue River – from Tongue River Dam to its confluence with the Yellowstone River	TONGUE RIVER: Based on historical documentation, the Tongue River is commercially navigable from the south line of Township 2 South, Range 44 East to its confluence with the Yellowstone River. Therefore, the state claims ownership of the Tongue River between these two points.
	BOULDER RIVER (Tributary to the Yellowstone River): Based on historical documentation, the Boulder River is commercially navigable from the northern township line of Township 6 South, Range 12 East, to its confluence with the Yellowstone River. The west Boulder River is commercially navigable from the southern line of Township 3 South, Range 11 East, to its confluence with the main stem of the Boulder River. Therefore, the state claims ownership of the Boulder River between these points.
	ROCK CREEK (Tributary of the Clark's Fork of the Yellowstone River): Based on historical documentation, Rock Creek is commercially navigable from the main fork of Rock Creek to Red Lodge, Montana. Therefore, the state claims ownership of Rock Creek between these two points.

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Montana Code Annotated - 2007

[Previous Section](#) [MCA Contents](#) [Part Contents](#) [Search](#) [Help](#) [Next Section](#)

23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;

(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or

(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters: fishing, hunting, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors